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5 Attorneys for Defendants  
6 **FEDERAL EXPRESS CORPORATION**  
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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

ORLANDO DELGADO, an  
individual,

Plaintiff,

v.

FEDERAL EXPRESS  
CORPORATION, a Delaware  
corporation and DOES 1-10,  
inclusive,

Defendants.

CASE NO.: 03576  
DEFENDANTS FEDERAL EXPRESS  
CORPORATION'S NOTICE OF  
REMOVAL

(DIVERSITY JURISDICTION 28  
U.S.C. §1332)

[Cal. Code Civ. Proc. 430.10 (e) and  
(f)]

Complaint Filed: June 30, 2008

Defendant, Federal Express Corporation (hereinafter referred to as "FedEx"  
or "Defendant"), by and through undersigned counsel and pursuant to 28 U.S.C. §§  
1441 and 1446, files this Notice of Removal effecting removal of the case styled  
*Orlando Delgado v. Federal Express Corporation, a Delaware Corporation Does  
1 Through 10, Inclusive*, from San Mateo County Superior Court to the United  
States District Court for the Northern District of California, San Francisco Division.  
As grounds for removal, Defendants FedEx states as follows:

1. This civil action was originally filed on June 30, 2008, in San Mateo

1 County Superior Court, and is now pending in said court, bearing Case No.  
2 CIV474303.

3  
4 2. Defendant Federal Express Corporation was served with the Summons  
5 and Complaint on June 30, 2008. Said Defendant had not received a copy of the  
6 Complaint prior to that time. The Summons and a copy of the Complaint are  
7 attached hereto as Exhibit A.  
8

9 3. The above-styled suit is a civil action for special, compensatory, and  
10 punitive damages, and for attorneys costs and fees, in which plaintiff, James Jordan,  
11 alleges eight causes of action against FedEx: (1) retaliation in violation of Cal.  
12 Gov. Code §12940(h); (2) failure to take all reasonable steps to prevent harassment  
13 from occurring in violation of Cal. Gov. Code §12940(k); (3) violation of  
14 California wage laws (Cal. Lab. Code §§203, 226.7, and I.W.C. Wage Orders); (4)  
15 violation of California's Unfair Business Practices Act (Cal. Bus. & Prof. Code  
16 §§17200-17208); and (5) violation of California public policy.  
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20 4. Plaintiff's Complaint does not specify the amount of damages sought,  
21 but FedEx submits that the Complaint contemplates an amount in controversy in  
22 excess of \$75,000.00, exclusive of interest and costs, in that Plaintiff seeks statutory  
23 economic damages, general, special, and incidental damages and amounts for  
24 emotional distress, punitive damages, attorney's fees, and such other and further  
25 relief as the Court deems just and proper. See Exhibit "A," Complaint, Prayer for  
26 Relief, p. 12.  
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1           5.     Where a plaintiff's state court complaint is silent as to the amount of  
2 damages claimed, the removing defendant need only establish that it is more  
3 probable than not that plaintiff's claim exceeds the jurisdictional minimum.  
4 Sanchez v. Monumental Life Ins. Co., 95 F.3d 856, 860-861 (9th Cir. 1996). In an  
5 action by a single plaintiff against a single defendant, all claims can be aggregated  
6 to meet the minimum jurisdictional amount. Bank of Calif. v. Twin Harbors  
7 Lumber Co., 465 F.2d 489, 491 (9th Cir. 1972). Defense counsel's testimony  
8 itemizing the bases for plaintiff's damages claims has been held sufficient to  
9 establish the jurisdictional minimum for diversity jurisdiction. Gafford v. General  
10 Electric Co., 997 F.2d 150, 160-161 (6th Cir. 1993).

11  
12           6.     In determining whether the amount in controversy exceeds \$75,000,  
13 the Court must presume the plaintiff will prevail on each and every one of his  
14 claims. Kenneth Rothschild Trust v. Morgan Stanley Dean Witter, 199 F.Supp.  
15 993, 1001 (C.D. Cal. 2002), citing Burns v. Windsor Ins. Co., 31 F.3d 1092, 1096  
16 (11th Cir. 1994) (the amount in controversy analysis presumes that "plaintiff  
17 prevails on liability") and Angus v. Shiley Inc., 989 F.2d 142, 146 (3d Cir. 1993)  
18 ("the amount in controversy is not measured by the low end of an open-ended  
19 claim, but rather by a reasonable reading of the value of the rights being litigated").  
20 The argument and facts set forth herein may appropriately be considered in  
21 determining whether the jurisdictional amount in controversy is satisfied. Cohn v.  
22 Petsmart, Inc., 281 F.3d 837, 843, n.1 (9th Cir. 2002), citing Willingham v.  
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1 Morgan, 395 U.S. 402, 407, n.3 (1969).

2 7. The amount in controversy may include general and special  
3 compensatory damages and attorney's fees which are recoverable by statute. Galt  
4 G/S v. JSS Scandinavia, 142 F.3d 1150, 1155-1156 (9th Cir. 1998). The Court may  
5 examine the nature of the action and the relief sought and take judicial notice of  
6 attorney's fee awards in similar cases. See, e.g., Simmons v. PCR Technology, 209  
7 F.Supp.2d 1029, 1035 (N.D. Cal. 2002) (noting that attorney's fees in individual  
8 employment discrimination cases often exceed damages).

9 8. Cases in the Ninth Circuit firmly establish that statutory attorney's fees  
10 will be included as a basis for determining the jurisdictional amount in controversy.  
11 See Galt G/S, supra, 142 F.3d at 1155-56. Furthermore, such fees are calculable  
12 beyond the time of removal. Simmons v. PCR Technology, 209 F.Supp.2d at 1035.

13 9. Punitive damages are also included in calculating the amount in  
14 controversy. Davenport v. Mutual Ben. Health & Acc. Ass'n, 325 F.2d 785, 787  
15 (9th Cir. 1963); see also Aucina v. Amoco Oil Co., 871 F.Supp. 332 (S.D. Iowa  
16 1994). The potential punitive damage award against a defendant such as FedEx  
17 alone may satisfy the amount in controversy requirement. Although FedEx  
18 vigorously denies Plaintiff's allegations, if Plaintiff was to prevail on one of his  
19 claims and establish the requisite state of mind, the punitive damages alone could  
20 exceed the jurisdictional minimum. Plaintiff's statement satisfies the jurisdictional  
21 prerequisite for amount in controversy. It cannot be said to a legal certainty that  
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1 Plaintiff would not be entitled to recover the jurisdictional amount. Anthony v.  
2 Security Pacific Financial Services, Inc., 75 F.3d 311, 315 (7th Cir. 1996); Watson  
3 v. Blankinship, 20 F.3d 383, 386-387 (10th Cir. 1994).

4  
5 10. In Aucina v. Amoco Oil Co., the defendant-employer established that  
6 the amount in controversy exceeded the jurisdictional minimum where the former  
7 employee asserted claims for lost wages, lost benefits, mental anguish, and punitive  
8 damages: The court noted that the defendant was a Fortune 500 Company, and that  
9 “[b]ecause the purpose of punitive damages is to capture a defendant’s attention  
10 and deter others from similar conduct” the plaintiff’s claim for punitive damages  
11 “might alone” exceed the jurisdictional minimum. Aucina, 871 F.Supp. at 334.  
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14 11. Moreover, specific recent verdicts in employment cases indicate that  
15 verdicts well in excess of the jurisdictional requisite were awarded to plaintiffs. (A  
16 copy of a verdict survey is attached to the Declaration of Cynthia Gonzalez as  
17 Exhibit A). In this vein, sometimes plaintiffs in employment cases are awarded for  
18 emotional distress and/or attorney’s fees although the economic losses are rather  
19 limited. For example, in Williams v. Corona/Norco Unified School District, Case  
20 No. 279869, decided February 4, 1997, the plaintiff, a 57-year-old African-  
21 American elementary school principal, had worked for the school district for only  
22 four and a half (4½) months prior to termination. Although the proved loss of  
23 earnings was only \$27,000.00 and future loss of earnings was \$113,000.00, the  
24 verdict was for \$325,000.00 on grounds of infliction of emotional distress.  
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1           12. Defendants' Notice of Removal has been filed within 30 days after the  
2 service on Defendants of Plaintiff's Complaint in accordance with 28 U.S.C.  
3 §1446(b).  
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5           13. Venue is proper in this Court.  
6

7           14. Copies of this Notice of Removal and a Notice of Filing of Notice of  
8 Removal, attached hereto as Exhibit B, have been mailed to Plaintiff and are being  
9 filed with the Clerk of the San Mateo County Superior Court. A copy of the Notice  
10 filed with the Clerk of the Superior Court will be filed with this court within five  
11 (5) days. Defendant filed an Answer with the State court prior to removing this  
12 case to this Court. A copy of the Answer filed with the clerk of the San Mateo  
13 County Superior Court is attached hereto as Exhibit C.  
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16           15. Plaintiff is currently, and was at the commencement of this action, a  
17 citizen of the State of California. Complaint at ¶2. Defendant, Federal Express  
18 Corporation is not citizens of California. Complaint at ¶3 and Declaration of  
19 Cynthia Gonzalez, attached hereto as Exhibit D.  
20

21           16. This Court, therefore, has original jurisdiction over Plaintiff's claims  
22 by virtue of diversity of citizenship and satisfaction of the amount in controversy  
23 requirement of 28 U.S.C. § 1332. This action is properly removable to federal  
24 court pursuant to 28 U.S.C. § 1332 and §1441(a).  
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1 WHEREFORE, Defendants hereby removes this action from the San Mateo  
2 County Superior Court to the United States District Court for the Northern District  
3 of California, San Francisco.  
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5  
6 DATED: July 25, 2008

Respectfully submitted,

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8 By: 

Christopher J. Yost

Attorney for Defendant

FEDERAL EXPRESS CORPORATION  
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**EXHIBIT A**



6/30/08 → 2:58P

SUM-100

**SUMMONS  
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**FEDERAL EXPRESS CORPORATION, a Delaware corporation and  
DOES 1 through 10, inclusive**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
ORLANDO DELGADO, an individual**RECEIVED**

JUL 3 3 2008

LITIGATION  
SUPPORT GROUPFOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)**ENDORSED FILED  
SAN MATEO COUNTY**

JUN 30 2008

Clerk of the Superior Court  
By R. Montgomery  
DEPUTY CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al menos que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Mateo  
400 County Center  
Redwood City, CA 94063

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Enrique Martinez, Esq. (510) 287-4302  
360 Grand Ave., #141 Oakland, CA 94610CASE NUMBER: **CV 474303**

(Número del Caso)

DATE:  
(Fecha)**JUN 30 2008****JOHN C. FITTON**Clerk, by  
(Secretario)**R. MONTGOMERY**Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **FEDERAL EXPRESS CORPORATION, A  
DELAWARE CORPORATION**  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):  
4. ☐ by personal delivery on (date):

Page 1 of 1

1 ROBERT SALINAS, SBN 184260  
2 PAMELA KONG, SBN 220912  
3 SUNDEEN SALINAS & PYLE  
4 1330 Broadway, Suite 1830  
Oakland, California 94612  
Telephone: (510) 663-9240  
Facsimile: (510) 663-9241

5 ENRIQUE MARTÍNEZ, SBN 206884  
6 LAW OFFICES OF ENRIQUE MARTÍNEZ  
7 360 Grand Ave., #141  
Oakland, California 94610  
Telephone: (510) 287-4302  
Facsimile: (510) 835-1417

8 Attorneys for Plaintiff  
9 ORLANDO DELGADO

**ENDORSED FILED**  
**SAN MATEO COUNTY**

JUN 8 0 2008

Clerk of the Superior Court  
By R. Montemary  
DEPUTY CLERK

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN MATEO**

13  
14 ORLANDO DELGADO, an individual,

15  
16 Plaintiff,

17 vs.

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19 FEDERAL EXPRESS CORPORATION, a  
Delaware corporation and DOES 1 through 10,  
20 inclusive,

21 Defendants.  
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Case No.:

**CIV 474303**

**COMPLAINT FOR:**

1. RETALIATION IN VIOLATION OF CAL. GOV. CODE § 12940(h);
2. FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT HARASSMENT FROM OCCURRING IN VIOLATION OF CAL. GOV. CODE § 12940(k);
3. VIOLATION OF CALIFORNIA WAGE LAWS (CAL. LAB. CODE §§ 203, 226.7 AND I.W.C. WAGE ORDERS);
4. VIOLATION OF CALIFORNIA'S UNFAIR BUSINESS PRACTICES ACT (CAL. BUS. & PROF. CODE §§ 17200-17208); AND,
5. VIOLATION OF CALIFORNIA PUBLIC POLICY.

**DEMAND FOR JURY TRIAL**

1 Plaintiff Orlando Delgado alleges his Complaint against Defendant Federal Express  
2 Corporation (FedEx) as follows:

3 **INTRODUCTION**

4 1. This case is about Orlando Delgado, an employee with an excellent work history at  
5 FedEx, who complained of discrimination and harassment based on national origin at the hands of  
6 two supervisors in the FedEx San Francisco International Airport Gateway facility (SFO Gateway).  
7 Mr. Delgado used FedEx's complaint process to inform management of the retaliation he was facing  
8 after his complaints. He also followed the chain of command to challenge FedEx's investigation  
9 findings regarding one of his complaints. However, instead of ending the supervisors' retaliation  
10 against Plaintiff, FedEx management terminated Mr. Delgado's employment in violation of  
11 California's Fair Employment and Housing Act (FEHA). Plaintiff also did not receive his second rest  
12 periods, as required by the California Labor Code.

13 **PARTIES**

14 2. Plaintiff Orlando Delgado is an individual who, at all times relevant hereto, was a  
15 resident of the State of California, County of Alameda, and worked in the County of San Mateo for  
16 Federal Express Corporation at the San Francisco International Airport (SFO).

17 3. Defendant Federal Express Corporation currently is, and at all times relevant hereto  
18 was, a corporation organized and existing by virtue of the laws of the State of Delaware and was, and  
19 is, conducting business in the County of San Mateo.

20 4. Plaintiff at this time is unaware of the true names and capacities of the defendants sued  
21 herein as DOES 1-10, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff  
22 is informed and believes, and on that basis alleges, that each fictitiously named defendant is  
23 responsible in some manner for the occurrences herein alleged, and that the injuries to Plaintiff herein  
24 alleged were legally caused by the conduct of such defendants. Plaintiff will seek leave to amend the  
25 Complaint to substitute the actual names of such individuals when their identities are determined.

26 **FACTUAL ALLEGATIONS**

27 5. Plaintiff was hired by FedEx in or about November 2000. Mr. Delgado performed his  
28 job in an exemplary fashion and consistently received excellent performance reviews during his career

1 at FedEx. Mr. Delgado is a Latino of Nicaraguan ancestry.

2 6. Throughout Plaintiff's employment, he was a "Material Handler" and worked only on  
3 the weekends. Plaintiff's basic duties were to load and unload airplane cargo and perform related  
4 duties in the graveyard shift. Mr. Delgado maintained full-time employment at other companies  
5 during his tenure at FedEx and through the present.

6 7. In approximately August 2006, Mr. Delgado first complained to FedEx management at  
7 SFO that ramp agent/supervisor Rendy Sjamsoeri showed favoritism toward his fellow Asian  
8 American workers and discriminated against Latinos, including Mr. Delgado. For instance, Mr.  
9 Sjamsoeri frequently ordered the Latino employees to work, while he and some of his Asian  
10 American co-workers watched movies, played baseball or took long smoking breaks. Mr. Sjamsoeri  
11 also separated Plaintiff and other Latino workers when they were working together and often  
12 addressed them in a disrespectful manner. Mr. Delgado was provided with and filed the appropriate  
13 equal employment opportunity (EEO) forms.

14 8. On or about December 4, 2006, Plaintiff received a letter from the Human Resources  
15 (HR) department stating that after thorough investigation, FedEx found that Mr. Sjamsoeri had  
16 violated company policies. Plaintiff was not given information as to whether Mr. Sjamsoeri was  
17 disciplined in any way.

18 9. Due to Mr. Delgado's complaint of discrimination to HR, Mr. Sjamsoeri took  
19 retaliatory actions against Plaintiff including, but not limited to, manipulating his assignments,  
20 refusing to train him and failing to assist him in doing tasks that required two persons. Plaintiff  
21 repeatedly complained to upper management that Mr. Sjamsoeri was retaliating against him. Mark  
22 Gudelunas, graveyard shift manager, simply told Plaintiff that he would take care of it, but did  
23 nothing to stop Mr. Sjamsoeri's retaliation. Plaintiff also complained to Glen Van Winkle, SFO  
24 General Manager and Mr. Gudelunas manager, but Mr. Van Winkle cancelled his meeting with  
25 Plaintiff and failed to return his phone calls. Plaintiff then complained to HR representative Karen  
26 Keaton about Mr. Sjamsoeri's actions against him and the fact that Mr. Gudelunas was doing nothing  
27 to stop the retaliation. Ms. Keaton simply told Plaintiff that she would have Mark (Mr. Gudelunas)  
28 look into it, which he did not do so.

1           10. Mr. Delgado and other Latino employees also complained to FedEx HR about ramp  
2 agent/supervisor Lynice Sanders' discriminatory behavior. On or about April 7, 2007, while  
3 employees were waiting around after a pre-work meeting and engaged in conversation within various  
4 groups, Ms. Sanders yelled at Plaintiff and other Latino employees who were speaking Spanish, "No  
5 Spanish speaking here!" All employees present stood in silence and disbelief that Ms. Sanders had  
6 made such a remark, especially since employees were speaking in different languages with their co-  
7 workers.

8           11. One of the Latino employees told Ms. Sanders words to the effect of "that's  
9 discrimination!" Another Latino employee commented that it was not right for Ms. Sanders to have  
10 told them to not speak Spanish. Mr. Delgado and the other Latino employees who were speaking  
11 Spanish went to complain to Mr. Gudelunas about Ms. Sanders' behavior. Mr. Gudelunas told  
12 Plaintiff that he believed there was such a policy of not speaking another language at FedEx because  
13 FedEx is an "American company" based out of the United States, and that he would call Ms. Keaton  
14 to get more clarification. Mr. Delgado requested paperwork from HR to submit a complaint of  
15 discrimination and harassment.

16           12. On or about April 14, 2007, Mr. Delgado followed up again with Mr. Gudelunas  
17 regarding the alleged policy of only speaking English at FedEx. Mr. Gudelunas responded that he  
18 could not find anything in the FedEx manual that only English could be spoken at work. Mr. Delgado  
19 also inquired with Mr. Gudelunas if HR Representative Karen Keaton would visit SFO Gateway to  
20 investigate the matter and Mr. Gudelunas responded that she would not be coming. Mr. Delgado told  
21 him that he felt Ms. Sanders' actions and Mr. Gudelunas support of her behavior were a violation of  
22 the EEO policies at FedEx and of the law. Plaintiff conveyed to Mr. Gudelunas that FedEx is a  
23 corporation where speaking multiple languages is one of the reasons the company functions globally.  
24 Plaintiff also called Mr. Van Winkle to complain about Ms. Sanders' behavior, but Mr. Van Winkle  
25 did not return his phone calls.

26           13. Pursuant to FedEx's rules, Plaintiff escalated his complaint to the FedEx HR office  
27 again. Mr. Delgado submitted his complaint of discrimination through FedEx's internal complaint  
28 process and received a letter dated April 24, 2007 from FedEx's HR Compliance department in



1 Memphis, Tennessee, acknowledging that FedEx would investigate the matter.

2 14. On or about April 28, 2007, HR Managing Director Ms. Carter and Ms. Keaton went to  
3 SFO Gateway to meet with Plaintiff and other employees about the incident of April 7th. Ms. Carter  
4 asked Mr. Delgado questions such as, did he speak Spanish or sing in Spanish at work, to which  
5 Plaintiff answered in the affirmative. Plaintiff also complained about Mr. Gudelunas telling his  
6 employees that since FedEx is an American company, speaking other languages is discouraged.  
7 Plaintiff reiterated to Ms. Carter and Ms. Keaton that Mr. Sjamsori continued to retaliate against him  
8 due to the discrimination complaint lodged by Plaintiff and that nothing was being done to prevent it.

9 15. On or about June 6, 2007, Mr. Delgado received a letter dated June 4, 2007 from Ms.  
10 Carter stating, "Although our investigation did not reveal any policy violations, I want to let you  
11 know that FedEx takes all complaints seriously."

12 16. After Plaintiff submitted his EEO complaint to FedEx concerning Ms. Sanders'  
13 behavior, Ms. Sanders refused to communicate and assist Plaintiff with work assignments. For  
14 instance, Plaintiff asked her about specific freight or forms essential to do his job, but Ms. Sanders  
15 simply ignored him, preventing Plaintiff from performing his duties. Mr. Delgado complained to Mr.  
16 Gudelunas about this retaliatory behavior and Mr. Gudelunas told Plaintiff that he would look into it.  
17 Ms. Sanders, as the Ramp Agent, however, continued making Plaintiff's work increasingly difficult.  
18 Other employees also began to pattern Ms. Sanders' behavior of ignoring Mr. Delgado's requests for  
19 help or inquiries regarding assignments. Plaintiff again repeatedly complained to Mr. Gudelunas that  
20 he was encountering team member issues and that Ms. Sanders and Mr. Sjamsori refused to provide  
21 him with the proper loading documentation, but the retaliation against Plaintiff continued.

22 17. Over the next several months, Mr. Delgado communicated with Ms. Carter and wrote  
23 letters to other management, including Audra Schroder, HR Compliance in Memphis, Scott Bunker,  
24 AGFS Western Region in Huntington Beach, California and Vice President Larry Brown in Memphis,  
25 to appeal HR's finding that Ms. Sanders had done nothing wrong. In emailed letters dated August 15,  
26 2007 sent to Mr. Bunker and Mr. Brown, Mr. Delgado also complained about the continued retaliation  
27 by Mr. Sjamsoeri, based on his first EEO complaint, and how Mr. Gudelunas had failed to stop the  
28 retaliation.

1           18. On September 6, 2007, Mr. Delgado wrote to Mr. Van Winkle that Ms. Sanders  
2 refused to give Mr. Delgado a sympathy card everyone else got a chance to sign for a co-worker  
3 whose father had passed away. Mr. Delgado explained that he felt it was an example of the retaliation  
4 he had been facing from Ms. Sanders as a result of his complaint against her. On or about September  
5 8, 2007, Mr. Delgado also wrote a follow-up letters to Mr. Bunker and Vice President Brown because  
6 he had not received any responses to his letter of August 15th.

7           19. On or about September 17, 2007, Mr. Delgado was called into a meeting in Oakland  
8 with Ms. Keaton and Guy Capriulo, who had replaced Connie Carter as HR Managing Director. Mr.  
9 Capriulo and Ms. Keaton explained to Plaintiff that the sympathy card incident was not retaliation and  
10 that he could buy his own card if he wished to do so. Mr. Delgado responded that he felt it went  
11 against FedEx's "Purple Promise" of respecting your fellow employees and explained how Ms.  
12 Sanders was also retaliating against him within the scope of their duties. Plaintiff further described  
13 how Mr. Sjamsori had continued to retaliate against him by completely ignoring his requests for help  
14 (e.g. duties that required two team members) or failing to provide specific instructions for a particular  
15 flight. They responded to Mr. Delgado that they would look into his complaints of retaliation,  
16 however, Mr. Capriulo emphasized to Plaintiff that his EEO complaints were "dead in the water" and  
17 that his letters flying all over the country were a waste of time. Mr. Capriulo warned Plaintiff that if  
18 he continued going through the company's complaint process, he would discipline Mr. Delgado. Mr.  
19 Capriulo also emphasized that FedEx is an "English-speaking company" and that Mr. Delgado or any  
20 other employee should not be allowed to speak in a foreign language. Mr. Capriulo added that if he  
21 heard any employees in the Oakland facility speak in a foreign language, he would bring it to their  
22 attention that it is not allowed. The meeting concluded with Plaintiff repeating that the retaliation he  
23 was facing from Ms. Sjamsori and Ms. Sanders had been going for a long time and that no one was  
24 doing anything to stop it.

25           20. On September 30, 2007 at approximately 4:00 a.m., Mr. Delgado was called into the  
26 office. At the office was Paul Ferrer, who introduced himself as a manager from the San Jose facility  
27 and said he was instructed to meet with Mr. Delgado, pursuant to Mr. Capriulo's orders. Mr. Delgado  
28 thought Mr. Ferrer was there to investigate his complaints against Mr. Sjamsori and Ms. Sanders since

1 Mr. Ferrer asked him general questions such as, "how do you treat your fellow co-workers?" and  
2 because Mr. Delgado had been told by HR in Oakland that they would look into those complaints.  
3 Mr. Ferrer also asked Mr. Delgado if he spoke Spanish at work and told Mr. Delgado that he and his  
4 workers in San Jose spoke Spanish and there was nothing against speaking Spanish at work. Finally,  
5 Mr. Ferrer told Plaintiff that he was there to investigate a complaint that was lodged against him. Mr.  
6 Delgado asked what complaint, but Mr. Ferrer simply said it was confidential and that an  
7 investigation would take place.

8 21. On or about October 7, 2007, Mr. Delgado was called into a meeting, where Mr.  
9 Gudelunas asked him to answer certain questions in writing. Mr. Gudelunas told Plaintiff that he had  
10 allegedly driven a transporter vehicle at unsafe speeds and yelled at a co-worker. Mr. Gudelunas gave  
11 Mr. Delgado a "letter of suspension," dated October 6, 2007, collected his identification badges and  
12 sent Plaintiff home.

13 22. In response to Plaintiff's letters of August 15th and September 8th to Vice-President  
14 Brown, and while he was on suspension, Mr. Delgado finally received a letter dated October 11, 2007  
15 from Robert A. Speroff, HR Managing Director in Memphis. Mr. Speroff wrote that Mr. Delgado's  
16 EEO complaints had been "responded to appropriately." On October 13th, Orlando was scheduled to  
17 return to work after his suspension, but he called in sick due to the stress he was facing at FedEx. On  
18 or about October 17th, Mr. Delgado went to his medical provider and received counseling services as  
19 a result of the problems he was facing at FedEx.

20 23. On October 20, 2007, Mr. Delgado returned to work after his suspension. Since  
21 Plaintiff no longer had his badges, Mr. Gudelunas met him at the entrance and took Plaintiff directly  
22 into the office. Mr. Gudelunas already had Plaintiff's check and termination letter (which had been  
23 prepared since October 13th) on the table. Mr. Delgado was not told by management who was the  
24 employee who had complained of his alleged behavior or other details surrounding the investigation.  
25 A security guard led Mr. Delgado to his locker to get his personal belongings and to return his  
26 uniforms. After nearly seven years of excellent service at FedEx, the security guard escorted Mr.  
27 Delgado out into the parking lot.

28 24. In response to FedEx's retaliation and inexplicably tolerant allowance of the foregoing



1 hostile work environment on its premises, Plaintiff filed an administrative complaint and exhausted  
2 the required administrative remedies with the California Department of Fair Employment & Housing  
3 (the "DFEH"). Attached as Exhibit A is a true and correct copy of the DFEH "Right to Sue" letter  
4 authorizing him to file suit against Defendant under the Fair Employment and Housing Act, California  
5 Government Code § 12900, *et seq.* (hereinafter referred to as the "FEHA").

6 25. In addition to the FEHA violations alleged herein, Plaintiff alleges that he was not  
7 provided with or informed that he was entitled to a second rest period in their 12-hour shift. Thus,  
8 Plaintiff did not take a second rest period until in or about July 2007, when Plaintiff was called into a  
9 meeting by Mr. Gudelunas who explained that from that point on, employees had to take a second rest  
10 period and write it on their timecards. Mr. Gudelunas then had Plaintiff and other workers sign a  
11 document stating that they understood it was their right to take a second rest period.

#### 12 FIRST CAUSE OF ACTION

##### 13 (For Retaliation in Violation of the FEHA)

14 26. Plaintiff realleges and incorporates all paragraphs above as though fully set forth  
15 herein.

16 27. As described in detail above, Plaintiff engaged in legally protected activity, namely,  
17 expressing opposition to discrimination based on national origin and repeatedly complaining about  
18 retaliation against him by his supervisors.

19 28. Defendant, and as aided by the managing agents of FedEx, subjected Plaintiff to  
20 adverse employment actions as described above, and which include actually terminating his  
21 employment. Plaintiff's protected activity was a motivating factor for the adverse employment  
22 actions.

23 29. Defendant's retaliatory acts, and as aided by the managing agents of FedEx, were  
24 unlawful and violated the FEHA, including Government Code § 12940, *et seq.*

25 30. As a direct and proximate result of Defendant's misconduct against Plaintiff, he has  
26 sustained, and continues to sustain, substantial losses in earnings and other employment benefits, and  
27 has suffered, and continues to suffer, humiliation, emotional distress, pain and suffering, and anguish,  
28 all to his damage in a sum according to proof at trial.

1       31. As a result of the unlawful retaliation by Defendant, Plaintiff is entitled to a statutory  
2 award of reasonable attorneys' fees and costs according to proof and pursuant to the FEHA, including,  
3 but not limited to, California Government Code section 12965(b), and Code of Civil Procedure  
4 section 1021.5.

5       32. Defendant permitted the retaliation described in this complaint oppressively,  
6 fraudulently, and maliciously, thereby entitling Plaintiff to an award of exemplary and punitive  
7 damages pursuant to Civil Code section 3294 in an amount to be proven at trial but sufficient to  
8 punish each of the Defendant for its conduct.

9                   **SECOND CAUSE OF ACTION**

10           **(For Failure to Take All Reasonable Steps to Prevent and Remediate the Retaliation as**  
11                   **Required Under the FEHA)**

12       33. Plaintiff realleges and incorporates all paragraphs above as though fully set forth  
13 herein.

14       34. California Government Code § 12940, *et seq.* provides that it shall be an unlawful  
15 employment practice for an employer to fail to take all reasonable steps necessary to prevent  
16 retaliation and discrimination from occurring.

17       35. Plaintiff alleges upon information and belief that Defendant failed to comply with the  
18 required procedural protections under the FEHA. Defendant's failure to provide FEHA procedural  
19 protections include, but is not limited to, conducting a proper investigation into Plaintiff's complaints  
20 and taking immediate corrective action.

21       36. As a result of Defendant's conduct and failure to comply with the required procedural  
22 protections, Plaintiff has suffered, and continues to suffer, damages including, but not limited to, lost  
23 wages and benefits, severe emotional distress, pain and anguish all in a sum according to proof at  
24 trial, which is in excess of the minimum jurisdictional requirements of this Court.

25       37. As a result of Defendant's misconduct, Plaintiff has incurred and continues to incur  
26 legal expenses and attorneys' fees. Upon a finding of liability for the misconduct described above,  
27 Plaintiff is entitled to an award of reasonable attorneys' fees and costs according to proof and  
28 pursuant to statute including, but not limited to, California Government Code section 12965(b) and

1 Code of Civil Procedure section 1021.5.

2 38. In carrying out the acts alleged above, Defendant acted with oppression, fraud, and  
3 malice, and Plaintiff is thereby entitled to an award of punitive and exemplary damages pursuant to  
4 California Civil Code section 3294 in an amount to be proven at trial but sufficient to punish the  
5 Defendant for its conduct.

6 **THIRD CAUSE OF ACTION**

7 **(For Violation of California Wage Laws)**

8 39. Plaintiff realleges and incorporates all paragraphs above as though fully set forth  
9 herein.

10 40. The California Labor Code and the Industrial Welfare Commission (IWC) provide for  
11 minimum employment conditions to be followed by all employers within the State of California.  
12 California law including, but not limited to, Cal. Lab. Code §§ 226.7 and 516, and IWC wage orders  
13 including, but not limited to, IWC Wage Order 9-2001, require that employees receive a paid rest  
14 break of not less than 10 minutes for each period of four hours worked.

15 41. Plaintiff alleges that Defendant failed to provide him with a second rest period of not  
16 less than 10 minutes when and as required, all in violation of California law, and failed to pay  
17 Plaintiff for those rest periods not provided, including civil statutory wages pursuant to California  
18 Labor Code sections 226.7.

19 42. Plaintiff further alleges that Defendant willfully failed to pay all wages upon  
20 termination of his employment, when those wages were due, which entitles Plaintiff to 30 days of  
21 statutory wages as required by California law including, but not limited to, Cal. Lab. Code §§ 201,  
22 202, and 203.

23 43. As a result of Defendant's unlawful acts, Plaintiff has been deprived of wages in  
24 amounts to be determined at trial, and is entitled to recovery of such amounts, plus interest thereon,  
25 attorneys' fees, costs, and penalties, under Labor Code sections 203 and 226.7.

26 **FOURTH CAUSE OF ACTION**

27 **(For Violation of California Bus. & Prof. Code §§ 17200-17208)**

28 44. Plaintiff realleges and incorporates all paragraphs above as though fully set forth

1 herein.

2 45. California Business and Profession Code § 17200 *et seq.* prohibits unfair competition,  
3 that is, any unlawful, unfair or fraudulent business practice.

4 46. The acts and practices described above constitute unfair, unlawful and fraudulent  
5 business practices, and unfair competition, within the meaning of Business and Professions Code §  
6 17200 *et seq.*, because they forced Plaintiff to work under substandard unlawful conditions as  
7 described above, while enabling Defendant to gain an unfair competitive advantage over law-abiding  
8 employers and competitors.

9 47. As a result of its unlawful and/or unfair acts, Defendant has reaped unfair benefits and  
10 illegal profits at Plaintiff's expense. Defendant should be made to disgorge these ill-gotten gains and  
11 restore to Plaintiff the wrongfully withheld rest period wages and/or statutory penalties, related  
12 waiting time penalties and interest, pursuant to Business and Professions Code §§ 17202 and 17203.

13 **FIFTH CAUSE OF ACTION**

14 **(For Violation of California Public Policy)**

15 48. Plaintiff realleges and incorporates all paragraphs above as though fully set forth  
16 herein.

17 49. Defendant, and its supervisors and managing agents, subjected Plaintiff to unlawful  
18 and unfair retaliation and ultimately wrongful employment termination, in violation of California  
19 public policy and state employment-related laws, including, but not limited to, the California  
20 Constitution, Art. I, § 8, California Government Code §§ 12900, *et seq.*, California Code of  
21 Regulations section 7287.6, California Business and Professions Code § 17200, *et seq.*, and the  
22 California Labor Code, including California Labor Code sections 201, 202, 203 and 226.7.

23 50. As a direct and proximate result of Defendant's violation of California public policy  
24 and employment-related laws, Plaintiff has suffered, and continues to suffer, damages, including, but  
25 not limited to, emotional distress and lost wages, all in a sum according to proof at trial.

26 51. Furthermore, Plaintiff is entitled to an award of reasonable attorneys' fees and costs  
27 according to proof and pursuant to statute, including, but not limited to, Code of Civil Procedure  
28 section 1021.5.

52. Defendant permitted the retaliatory, hostile and intimidating work environment to continue, and committed the acts described in this complaint oppressively, fraudulently, and maliciously, thereby entitling Plaintiff to an award of exemplary and punitive damages pursuant to Civil Code section 3294, in an amount to be proven at trial but sufficient to punish the Defendant for its conduct.

**PRAYER FOR RELIEF**

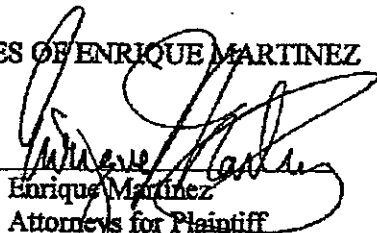
WHEREFORE, Plaintiff prays for relief against Defendant as follows:

**AS TO ALL CAUSES OF ACTION**

- A. For economic damages according to proof;
- B. For general, special and incidental damages and amounts for emotional distress according to proof;
- C. For punitive damages in an amount appropriate to punish Defendant for its wrongful conduct and set an example for others;
- D. For prejudgment interest at the legal rate as provided by law;
- E. For attorneys' fees and costs as permitted under applicable law; and
- F. For such other and further relief as the Court deems just and proper.

DATED: June 30, 2008

LAW OFFICES OF ENRIQUE MARTINEZ

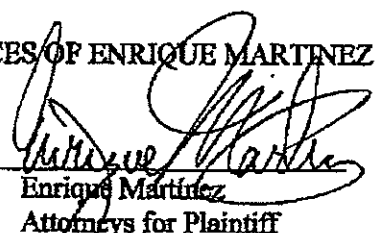
By   
Enrique Martinez  
Attorneys for Plaintiff  
Orlando Delgado

**REQUEST FOR JURY TRIAL**

Plaintiff further requests a trial by jury on all issues properly belonging before a jury.

DATED: June 30, 2008

LAW OFFICES OF ENRIQUE MARTINEZ

By   
Enrique Martinez  
Attorneys for Plaintiff  
Orlando Delgado

**EXHIBIT B**

1 Christopher J. Yost, Bar No. 150785  
2 **FEDERAL EXPRESS CORPORATION**  
3 2601 Main Street, Suite 340  
4 Irvine, California 92614  
5 Telephone: (949) 862-4558  
6 Facsimile: (949) 862-4605  
7 Email: [cjyost@fedex.com](mailto:cjyost@fedex.com)

8 Attorneys for Defendants  
9 **FEDERAL EXPRESS CORPORATION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

11 ORLANDO DELGADO, an individual,

12 Plaintiff,

13 v.

14 **FEDERAL EXPRESS CORPORATION,**  
15 a Delaware corporation and DOES 1-10,  
16 inclusive,

16 Defendants.

CASE NO.: CIV 474303

**DEFENDANT FEDERAL EXPRESS  
CORPORATION'S NOTICE OF FILING  
NOTICE OF REMOVAL**

Complaint Filed: June 30, 2008

18 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that Federal Express Corporation has filed in the United States  
20 District Court for the Northern District –San Francisco Division, the attached Notice of Removal,  
21 thereby effecting the removal of this case to that Court, pursuant to Title 28 U.S.C. §1446(d).

23 DATED: July 25, 2008

Respectfully submitted,

By: 

Christopher J. Yost  
Attorney for Defendant  
**FEDERAL EXPRESS CORPORATION**



**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Federal Express Corporation, 2601 Main Street, Suite 340, Irvine, CA 92614.

On July 25, 2008, I served the within document(s):

**DEFENDANT FEDERAL EXPRESS CORPORATION'S GENERAL DENIAL AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S UNVERIFIED COMPLAINT**

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Irvine, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with delivery fees provided for, addressed as follows for collection by Federal Express for overnight delivery at Federal Express Corporation, 2601 Main Street, Suite 340, Irvine, California in accordance with Federal Express Corporation's ordinary business practices.

**Robert Salinas, Esq. & Pamela Kong, Esq.**

**Sundeen, Salinas, & Pyle  
1330 Broadway, Suite 1830  
Oakland, CA 94612**

**Telephone No.: (510) 663-9240 / Facsimile No.: (510) 663-9241**

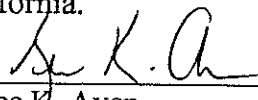
**Enrique Martinez, Esq.**

**Law Office of Enrique Martinez  
360 Grand Avenue, #141  
Oakland, CA 94610**

**Telephone No.: (510) 287-4302 / Facsimile No.: (510) 835-1417  
Attorneys for Plaintiff, Orlando Delgado**

- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 25, 2008, at Irvine, California.

  
Renee K. Aven

739457



**EXHIBIT C**

1 Christopher J. Yost, Bar No. 150785  
2 **FEDERAL EXPRESS CORPORATION**  
3 2601 Main Street, Suite 340  
4 Irvine, California 92614  
5 Telephone: (949) 862-4558  
6 Facsimile: (949) 862-4605  
7 Email: cjyost@fedex.com

8 Attorney for Defendant  
9 **FEDERAL EXPRESS CORPORATION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

ORLANDO DELGADO, an individual,

Plaintiff,

v.

FEDERAL EXPRESS CORPORATION,  
a Delaware corporation and DOES 1-10,  
inclusive,

Defendants.

CASE NO.: CIV 474303

**ANSWER OF DEFENDANT FEDERAL  
EXPRESS CORPORATION**

Complaint Filed: June 30, 2008

Defendant, FEDERAL EXPRESS CORPORATION (hereinafter referred to as "FedEx" or  
"Defendant") hereby answers the unverified Complaint ("Complaint") of Plaintiff ORLANDO  
DELGADO ("Plaintiff") on file herein as follows:

**ANSWER**

Pursuant to California Code of Civil Procedure § 431.30(d), Defendant denies, generally and  
specifically, each and every allegation set forth in Plaintiff's Complaint and each purported cause of  
action contained therein. Defendant further deny, generally and specifically, that Plaintiff has been  
damaged in the sums alleged or in any sum at all as a result of the acts, omissions or other conduct of  
Defendant, Defendant's agents, employees or independent contractors, alleged in the Complaint and  
deny that Plaintiff is entitled to any of the relief sought against Defendant in the Complaint.  
Defendant further deny that they are in any way liable to Plaintiff or that they have acted or failed to



I  
**ANSWER OF DEFENDANT FEDERAL EXPRESS CORPORATION**

1 act so as to be the legal cause of any damage to Plaintiff.

2 **AFFIRMATIVE DEFENSES**

3 As separate, distinct, and affirmative defenses to Plaintiff's Complaint, and to the purported  
4 causes of action therein, Defendant allege and aver the following, but do not concede that they have  
5 the burden of proof with respect to any such affirmative defense:

6 **FIRST AFFIRMATIVE DEFENSE**

7 1. The Complaint, and each purported cause of action contained therein, fails to state  
8 facts sufficient to constitute a cause of action against Defendant.

9 **SECOND AFFIRMATIVE DEFENSE**

10 2. The Complaint, and each purported cause of action contained therein, is barred, in  
11 whole or in part, because Defendant had an honest, reasonable, good faith belief in the facts on  
12 which they, or their agents and/or employees, based their acts, omissions and conduct taken with  
13 respect to Plaintiff and all acts were undertaken for legitimate business reasons.

14 **THIRD AFFIRMATIVE DEFENSE**

15 3. The acts, omissions or other conduct alleged in the Complaint, and each purported  
16 cause of action contained therein, was based on reasonable, non-discriminatory factors and was free  
17 from unlawful discrimination or violation of public policy of any kind.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 4. Defendant expressly denies that it engaged in any unlawful conduct towards Plaintiff.  
20 However, if the Court or trier of fact determines that unlawful conduct by any agent or employee of  
21 Defendant occurred, such conduct was neither authorized nor ratified by Defendant.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 5. The Complaint, and each purported cause of action contained therein, is barred, in  
24 whole or in part, by virtue of the doctrine of unclean hands.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 6. The Complaint, and each purported cause of action contained therein, is barred  
27 because the injuries and damages allegedly incurred by Plaintiff were not the result of any acts,  
28 omissions or other conduct of Defendant.



**SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiff was employed for no definite term, and his employment was thus terminable at will.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Any and all claims asserted by Plaintiff based in whole or in part upon alleged physical, emotional, economic or other injury or distress are barred because Plaintiff's sole and exclusive remedy for such injuries, if any, is governed by the California Workers' Compensation laws ("Act"), because Plaintiff's claims occurred at a time when (a) Defendant and Plaintiff were subject to the compensation provisions of the Act, (b) Plaintiff was performing services growing out of and incidental to his employment, and (c) the injuries complained of by Plaintiff in his action allegedly were caused by his employment. California Labor Code, § 3600, et seq.

**NINTH AFFIRMATIVE DEFENSE**

9. Plaintiff is estopped from recovering damages pursuant to the Complaint, and each purported cause of action contained therein, by his acts, omissions or other conduct, including, but not limited to, his failure to utilize and otherwise exhaust his remedies under Defendant's internal complaint procedure to complain of the acts, omissions and conduct alleged in a timely fashion.

**TENTH AFFIRMATIVE DEFENSE**

10. Plaintiff has waived his right to recover damages or any other relief against Defendant by his own acts, omissions or conduct.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Plaintiff has failed to mitigate or reasonably attempt to mitigate his damages, if any, as required by law.

**TWELFTH AFFIRMATIVE DEFENSE**

12. To the extent that Plaintiff has suffered physical injuries and/or emotional distress, Plaintiff's injuries or damages, if any, were caused by factors unrelated to the conditions of his work environment, or the acts or omissions of Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. Defendant are entitled to set off any recovery Plaintiff receives or received under the



1 California Workers' Compensation Act and/or California's State Disability Insurance Act for injuries  
2 or damages alleged in the Complaint against any damages award to his in this action, if any.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 14. Plaintiff is not entitled to pre-judgment interest in this matter because his claims do  
5 not qualify for such interest. California Civil Code, §§ 3287 and 3288.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 15. Plaintiff's claims are barred by virtue of the doctrine of after acquired evidence  
8 because of misrepresentations contained in his employment applications and/or supporting  
9 documents and/or his conduct during the course of his employment with Defendant.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 16. Plaintiff's purported causes of action are barred, in whole or in part, by the applicable  
12 statute of limitations, including, but not limited to, California Civil Code of Procedure §§ 335.1, 337,  
13 338(a), 339 and/or 340 and 343, Labor Code § 1197.5, and Government Code §§ 12960 and 12965,  
14 as well as any other applicable statute of limitation, and no statute of limitation was tolled by the  
15 filing of a workers' compensation claim.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 17. Plaintiff's purported causes of action are barred, in whole or in part, by the applicable  
18 contractual statute of limitations period.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 18. Plaintiff's claims for punitive damages are barred because California's laws regarding  
21 the alleged conduct in question in this action are too vague to permit the imposition of punitive  
22 damages, and because California's laws, rules and procedures regarding punitive damages deny due  
23 process, impose criminal penalties without the requisite protection, violate the Eighth and Fourteenth  
24 Amendments of the United States Constitution and place an unreasonable burden on interstate  
25 commerce.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 19. Plaintiff's claims for punitive damages against Defendant cannot be sustained  
28 because any award of exemplary or punitive damages under California law without proof of every



1 element beyond a reasonable doubt would violate Defendant's rights under the Fourth, Fifth, Sixth,  
2 Eighth and Fourteenth Amendments to the United States Constitution, and Article I, § 7 of the  
3 California Constitution, and would be improper under the common law and public policies of the  
4 State of California.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 20. Plaintiff's claims for punitive damages are barred as a result of Defendant's good faith  
7 efforts to comply with applicable employment discrimination laws.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 21. Plaintiff is not entitled to recover any punitive or exemplary damages and any  
10 allegations with respect thereto should be stricken because Plaintiff has failed to plead and cannot  
11 prove facts sufficient to support allegations of oppression, fraud and/or malice, nor can he show  
12 advance knowledge, conscious disregard, authorization, and/or ratification by an officer, director or  
13 managing agent of Federal Express. California Labor Code, § 3294.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 22. Plaintiff is not entitled to recover any punitive or exemplary damages and any  
16 allegation with respect thereto should be stricken because Plaintiff has failed to plead and cannot  
17 prove facts sufficient to support allegations of oppression, fraud and/or malice, nor can he show  
18 advance knowledge, conscious disregard, authorization, ratification and/or an act of oppression,  
19 fraud or malice on the part of an officer, director or managing agent of Federal Express. California  
20 Labor Code, § 3294.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 23. The liability of Defendant for the non-economic damages claimed by Plaintiff is  
23 limited by Civil Code § 1431.1 and 1431.2, et seq.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 24. The Complaint and each of the purported causes of action are barred, in whole or in  
26  
27  
28



1 part, because Plaintiff failed to fulfill the conditions and/or terms of his employment.

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 25. If and to the extent that Plaintiff has suffered the damages alleged in any of the causes  
4 of action asserted in his Complaint, Plaintiff's own negligence and/or willful misconduct directly  
5 and proximately caused or contributed to some or all of the damages claimed.

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

7 26. The Complaint, and each purported cause of action contained therein, is barred, in  
8 whole or in part, because Plaintiff breached his duty of reasonable care, good faith and loyalty to  
9 Federal Express. California Labor Code §§ 2954, 2856, and 2959.

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 27. The Complaint and each of the purported causes of action cannot be maintained  
12 because Defendant acted reasonably and in good faith, at all times, based upon all relevant facts and  
13 circumstances known by Defendant at the time it acted.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 28. Because Plaintiff's Complaint is couched in broad and conclusory terms, Defendant  
16 cannot fully anticipate all defenses that may be applicable to the within action. Accordingly, the  
17 right to assert additional defenses, if and to the extent that such defenses are applicable, is hereby  
18 reserved.

19 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

20 29. Plaintiff's purported causes of action are barred, in whole or in part, by the Plaintiff's  
21 failure to exhaust his administrative remedies.

22 **THIRTIETH AFFIRMATIVE DEFENSE**

23 30. Plaintiff's purported causes of action are barred, in whole or in part, by the Plaintiff's  
24 failure to exhaust his contractual remedies.

25 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

26 31. Plaintiff's claims for special damages are barred because Plaintiff has failed to allege  
27 such damages with the requisite specificity.  
28





**THIRTY-SECOND AFFIRMATIVE DEFENSE**

32. Plaintiff unreasonably delayed filing this action, thereby prejudicing Defendant and barring Plaintiff's claims under the doctrine of laches.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

33. Assuming the acts and/or omissions complained of occurred (they did not), said acts and/or omissions did not constitute severe and pervasive conduct.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

34. Plaintiff's retaliation claim is barred to the extent he did not engage in any protected activity.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

35. Assuming any harassment occurred (it did not), Defendant did not know, and could not have reasonably known, about the harassment.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

36. In the alternative, assuming any harassment occurred (it did not), and assuming Defendant knew about the harassment (they did not), prompt and effective remedial action was taken.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

37. Federal Express took reasonable steps to prevent and correct workplace harassment through the appropriate training, policies and complaint mechanisms.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

38. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is barred by failure to satisfactorily perform his job responsibilities and otherwise conduct himself in accordance with the standards and policies of Federal Express.





**THIRTY-NINTH AFFIRMATIVE DEFENSE**

39. Plaintiff is barred from recovering any damages under the avoidable consequences doctrine, because (1) Federal Express took reasonable steps to prevent and correct workplace harassment; (2) Plaintiff unreasonably failed to use the preventive and corrective measures that Federal Express provided; and (3) reasonable use of Federal Express's procedures would have prevented the harm that Plaintiff allegedly suffered. *State Department of Health Services v. the Superior Court of Sacramento County* (2003) 31 Cal.4<sup>th</sup> 1026, 6 Cal.Rptr.3d 441.

**PRAYER FOR RELIEF**

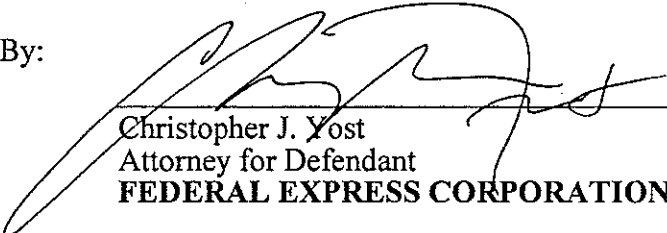
WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by virtue of his Complaint, and that the Complaint be dismissed in its entirety, with prejudice;
2. That judgment be entered in favor of the Defendant and against Plaintiff;
3. That Defendant be awarded its attorney's fees and costs of suit herein; and
4. That Defendant be awarded such other and further relief as the Court may deem just and proper.

DATED: July 25, 2008

Respectfully submitted,

By:

  
Christopher J. Yost  
Attorney for Defendant  
**FEDERAL EXPRESS CORPORATION**



**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Federal Express Corporation, 2601 Main Street, Suite 340, Irvine, CA 92614.

On July 25, 2008, I served the within document(s):

**DEFENDANT FEDERAL EXPRESS CORPORATION'S NOTICE OF FILING NOTICE OF REMOVAL**

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Irvine, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with delivery fees provided for, addressed as follows for collection by Federal Express for overnight delivery at Federal Express Corporation, 2601 Main Street, Suite 340, Irvine, California in accordance with Federal Express Corporation's ordinary business practices.

**Robert Salinas, Esq. & Pamela Kong, Esq.  
Sundeen, Salinas, & Pyle  
1330 Broadway, Suite 1830  
Oakland, CA 94612**

**Telephone No.: (510) 663-9240 / Facsimile No.: (510) 663-9241**

**Enrique Martinez, Esq.  
Law Office of Enrique Martinez  
360 Grand Avenue, #141  
Oakland, CA 94610**

**Telephone No.: (510) 287-4302 / Facsimile No.: (510) 835-1417  
Attorneys for Plaintiff, Orlando Delgado**

- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 25, 2008, at Irvine, California.

  
\_\_\_\_\_  
Renee K. Aven

739448



**EXHIBIT D**

1 Christopher J. Yost, Bar No. 150785  
2 **FEDERAL EXPRESS CORPORATION**  
3 2601 Main Street, Suite 340  
4 Irvine, California 92614  
Telephone: (949) 862-4558  
Facsimile: (949) 862-4605  
cjyost@fedex.com

5 Attorney for Defendants  
6 **FEDERAL EXPRESS CORPORATION**

7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**  
10

11 **ORLANDO DELGADO, an**  
12 **individual,**

13 **Plaintiff,**

14 **v.**

15 **FEDERAL EXPRESS**  
16 **CORPORATION, a Delaware**  
17 **corporation and DOES 1-10,**  
18 **inclusive,**

19 **Defendants.**

**CASE NO.:**

**DECLARATION OF CYNTHIA D.**  
**GONZALEZ IN SUPPORT OF**  
**NOTICE TO FEDERAL COURT OF**  
**REMOVAL OF CIVIL ACTION**  
**FROM STATE COURT**

**(DIVERSITY JURISDICTION 28**  
**U.S.C. §1332)**

**[Cal. Code Civ. Proc. 430.10 (e) and**  
**(f)]**

Complaint Filed: June 30, 2008

20 1. I am over the age of twenty-one and am competent to testify as to the  
21 matters set forth herein. I am a Paralegal employed by Federal Express Corporation  
22 in Irvine, California. Except where otherwise indicated, I have personal knowledge  
23 of the facts set forth in this Declaration and if called as a witness, I could and would  
24 testify competently to each fact.

25 2. Federal Express Corporation is a publicly held company with shares  
26 traded on the New York Stock Exchange. It is a Delaware Corporation with its  
27 principal place of business in Tennessee.  
28



**EXHIBIT A**



ORRICK, HERRINGTON & SUTCLIFFE LLP  
OLD FEDERAL RESERVE BANK BUILDING  
400 SANSOME STREET  
SAN FRANCISCO, CA 94111-3143  
tel 415-392-1122  
fax 415-773-5759  
WWW.ORRICK.COM

## SUMMARY OF CALIFORNIA JURY VERDICTS IN EMPLOYMENT CASES

This study is a compilation of reported jury verdicts in employment cases tried in California state and federal courts from 1981 through April 2001. This study reflects those verdicts reported in *Jury Verdicts Weekly*, the *San Francisco Daily Journal* and *California Law Reporter*. Therefore, it may not reflect all reported verdicts. Also, because our interest is to summarize what juries have decided in these cases, the study in most instances does not report on any reversals, reductions or other modifications resulting from post-trial motions or appeals. The study also excludes cases which were settled or dismissed before reaching a jury.

The study looks at these jury verdicts by the major employment issue involved, broken down by superior court or district court, type of jury award and year. To help summarize the information, the study provides the following five categories of information: (1) the total number of verdicts; (2) the average jury award for all verdicts; (3) the percentage of verdicts in which the plaintiff prevailed; (4) the numerical average of all verdicts in favor of the plaintiff; and (5) the median verdict (i.e., the number above and below which there is an equal number).

When comparing the median verdict with the average verdict, it is important to note that an average is very sensitive to extremely high or extremely low jury awards. This is especially true given that several verdicts have exceeded \$10 million.

We believe that the data is now sufficiently large to permit analysis of litigation trends in jury trials. Nonetheless, because each trial is so unique, it is impossible to predict the likely result in any particular case.

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\* For example, a verdict in excess of \$100 million on behalf of twenty-one plaintiffs against Interstate Brands in 2000 was reduced over 80 percent by the Trial Court on post-verdict motions. We note that several recent studies have dealt with the effect on jury verdicts of post-trial motions and appellate decisions that have reversed or materially reduced jury awards.

**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
**SUMMARY OF CALIFORNIA JURY**  
**VERDICTS IN EMPLOYMENT CASES**  
 (Reported From January 1989 through April 30, 2001)

**WRONGFUL TERMINATION**

Issues	Total Verdicts	Averages Based on Total Verdicts	Plaintiff Prevailed: Number (Percent)	Average Jury Award	Median Jury Award
<u>Discrimination</u>					
Sex	182	\$193,658	84 (46%)	\$419,593	\$227,479
(Sexual Harassment)	(69)	(283,513)	(35) (51%)	558,411	(275,000)
(Non-Harassment)	(113)	(16,763)	(49) (43%)	(320,070)	(140,242)
Race	102	697,785	48 (47%)	1,482,792	495,351
Age	118	348,960	47 (40%)	876,113	472,488
Disability	48	200,705	25 (52%)	385,354	250,000
Total**	450		204 (45%)		
<u>Non-Discrimination</u>					
Breach of Contract/Covenant	310	460,997	207 (67%)	690,382	255,263
Violation of Public Policy	114	602,625	62 (54%)	1,108,053	250,000
Fraud/Misrepresentation	16	661,917	9 (56%)	1,176,742	451,876
Defamation/Slander	16	510,314	6 (38%)	1,360,837	123,000
Retaliation	24	572,054	15 (63%)	915,286	239,866
Total**	480		299 (62%)		

\*\* These totals overlap due to more than one cause of action in some cases.



**ORRUCK, HERRINGTON & SUTCLIFFE LLP**  
**SUMMARY OF CALIFORNIA JURY**  
**VERDICTS IN EMPLOYMENT CASES**  
**(Reported From January 1989 through April 30, 2000)**

NON-TERMINATION (includes such issues as harassment, failure to hire, failure to promote, demotion, etc.)				
Discrimination	Verdicts Based on Total Verdicts	Average Based on Total Verdicts	Plaintiffs Prevailed Number (Percent)	Median Jury Award
Sex	124	\$297,643	77 (62%)	\$479,321
(Sexual Harassment)	94	(293,688)	(58) (62%)	(484,153)
(Non-Harassment)	30	(161,177)	(19) (63%)	(516,481)
Race	78	295,427	32 (41%)	720,103
Age	20	310,322	5 (25%)	1,241,288
Disability	25	253,789	8 (32%)	793,091
Total**	215		110 (51%)	
Non-Discrimination				
Violation of Public Policy	17	\$248,541	7 (41%)	\$603,600
Breach of Contract/Covenant	24	193,102	14 (58%)	331,032
Retaliation	37	54,832	17 (46%)	119,341
Total**	78		38 (51%)	
				\$442,000
				265,000
				87,000

**\*\* These totals overlap due to more than one cause of action in some cases.**

**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
**SUMMARY OF CALIFORNIA JURY**  
**VERDICTS IN EMPLOYMENT CASES**  
 (Reported From January 1989 through April 30, 2001)

JURY AWARDS IN CALIFORNIA STATE AND FEDERAL COURTS	
Court	Median Jury Award

Selected California Superior Courts

Alameda	\$123,000	\$822,158	73	39 (53%)
Los Angeles	353,238	1,031,255	422	229 (54%)
Orange	366,700	935,173	115	50 (43%)
Sacramento	352,000	1,072,417	65	29 (45%)
San Bernardino	226,150	383,977	41	22 (54%)
Santa Clara	275,000	513,732	59	35 (59%)
San Diego	228,254	379,482	122	52 (43%)
San Francisco	145,121	437,671	76	44 (59%)
San Mateo	293,500	513,732	23	16 (70%)
<b>Total</b>	<b>300,159</b>	<b>689,454</b>	<b>996</b>	<b>516 (51.8%)</b>

United States District Courts

Northern	\$250,000	\$1,306,524	53	25 (47%)
Eastern	494,351	1,028,617	12	5 (42%)
Central	223,000	755,889	55	27 (49%)
Southern	315,000	292,667	5	3 (60%)
<b>All California U.S. District Courts</b>	<b>268,200</b>	<b>845,924</b>	<b>125</b>	<b>60 (48%)</b>
<b>Total</b>	<b>300,000</b>	<b>767,689</b>	<b>1,121</b>	<b>576 (51%)</b>

**ORRICK, HERRINGTON & SUTCLIFFE LLP  
SUMMARY OF CALIFORNIA JURY  
VERDICTS IN EMPLOYMENT CASES**

Year	Median Jury Award	Average Jury Award	Total Verdicts	Verdicts Prevalent
				Number (Percent)
1981	\$300,000	\$490,091	18	11 (65%)
1982	136,660	472,946	35	22 (63%)
1983	76,500	238,221	24	13 (54%)
1984	230,000	766,152	29	17 (59%)
1985	252,743	795,343	64	50 (78%)
1986	109,000	268,395	72	42 (58%)
1987	260,500	866,074	80	42 (53%)
1988	120,742	610,613	63	42 (67%)
1989	154,007	341,431	42	28 (66%)
1990	317,135	1,806,034	67	46 (68%)
1991	278,900	449,668	69	37 (53%)
1992	330,000	816,858	81	35 (43%)
1993	250,000	429,315	95	51 (54%)
1994	250,000	457,777	141	79 (56%)
1995	242,479	439,653	106	58 (55%)
1996	184,000	646,013	106	47 (44%)
1997	244,933	643,571	184	94 (51%)
1998	313,500	885,395	209	96 (46%)
1999	368,393	994,730	137	68 (50%)
2000	471,500	1,291,852	86	36 (42%)
2001	426,000	412,833	16	6 (38%)

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**ORRICK, HERRINGTON & SUTCLIFFE LLP  
SUMMARY OF CALIFORNIA JURY  
VERDICTS IN EMPLOYMENT CASES**

**EMOTIONAL DISTRESS AWARDS**

Year	Median Jury Award	Verdicts (in Millions)	Verdicts	Number of Verdicts	Percentage of Verdicts
1981	\$45,000			18	1 (6%)
1982	6,500	\$45,000		35	4 (11%)
1983	150,000	150,000		24	1 (4%)
1984	50,000	50,000		29	2 (7%)
1985	37,000	44,400		64	5 (8%)
1986	30,000	41,318		72	11 (15%)
1987	79,500	145,188		80	8 (10%)
1988	75,000	201,198		63	13 (21%)
1989	80,000	81,429		42	7 (17%)
1990	55,750	270,642		67	23 (34%)
1991	200,000	192,611		69	9 (13%)
1992	200,000	160,134		81	7 (9%)
1993	96,148	199,998		95	19 (20%)
1994	100,000	150,582		141	27 (19%)
1995	85,000	214,965		106	18 (17%)
1996	135,420	309,997		106	23 (22%)
1997	388,000	388,000		184	3 (2%)
1998	500,000	1,249,424		209	7 (3%)
1999	140,000	553,312		137	4 (3%)
2000	425,000	425,000		86	2 (2%)
2001	-0-	-0-		16	-0- (0%)

**ORRICK, HERRINGTON & SUTCLIFFE LLP  
SUMMARY OF CALIFORNIA JURY  
VERDICTS IN EMPLOYMENT CASES**

**PUNITIVE DAMAGES AWARDS**

Year  
Median Jury Award  
Verdict  
Total Verdicts  
Plaintiffs Prevailed  
Number (Percent)

1981	\$200,000	\$444,333	18	6 (35%)
1982	100,000	637,713	35	12 (34%)
1983	1,500,000	1,500,000	24	1 (4%)
1984	100,000	498,364	29	11 (38%)
1985	250,000	750,984	64	25 (39%)
1986	75,000	225,000	72	25 (34%)
1987	261,430	1,182,656	80	20 (25%)
1988	305,173	1,161,659	63	12 (19%)
1989	200,000	284,050	42	7 (17%)
1990	115,000	3,394,321	67	14 (20%)
1991	500,000	661,929	69	7 (10%)
1992	1,000,000	1,187,929	81	7 (9%)
1993	235,000	414,995	95	11 (12%)
1994	404,500	913,708	141	12 (9%)
1995	125,000	225,455	106	11 (10%)
1996	325,000	983,715	106	12 (11%)
1997	122,272	734,427	183	28 (15%)
1998	250,000	1,785,198	209	23 (11%)
1999	993,134	2,154,793	137	9 (7%)
2000	1,500,000	15,092,564	86	9 (11%)
2001	42,500	42,500	16	2 (12%)

<sup>1</sup> Total Punitive Damages Verdicts - \$500k-\$1 million: 27  
Total Punitive Damages Verdicts - \$1 million or more: 27

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**CERTIFICATE OF SERVICE**

I declare that I am employed with the Legal Department of Federal Express Corporation, whose address is 2601 Main Street, Suite 340, Irvine, California 92614. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on July 25, 2008, I served a copy of:

**DECLARATION OF CYNTHIA D. GONZALEZ IN SUPPORT OF NOTICE  
TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION FROM STATE  
COURT**

☒ **BY U.S. MAIL [Fed. Rule Civ. Proc. rule 5(b)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Fed Ex, 2601 Main Street, suite 340, Irvine, California 92614 in accordance with Fed Ex's ordinary business practices.

I am readily familiar with Fed Ex's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Fed Ex's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Fed Ex with postage thereon fully prepaid for collection and mailing.

☐ **BY OVERNIGHT DELIVERY [Fed. Rule Civ. Proc. rule 5(b)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by Fed Ex Express, at 2601 Main Street, suite 340, Irvine, California 92614 in accordance with Fed Ex's ordinary business practices.

I am readily familiar with Fed Ex's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Fed Ex's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by Fed Ex Express or delivered to an authorized courier or driver authorized by Fed Ex Express to receive documents on the same date that it (they) is are placed at Fed Ex for collection.



Service List

Robert Salinas, Esq. & Pamela Kong, Esq.  
Sundeen, Salinas, & Pyle  
1330 Broadway, Suite 1830  
Oakland, CA 94612  
Telephone No.: (510) 663-9240 / Facsimile No.: (510) 663-9241

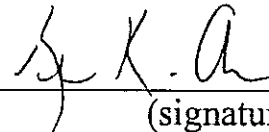
Enrique Martinez, Esq.  
Law Office of Enrique Martinez  
360 Grand Avenue, #141  
Oakland, CA 94610  
Telephone No.: (510) 287-4302 / Facsimile No.: (510) 835-1417

Attorneys for Plaintiff, Orlando Delgado

I declare under penalty of perjury that the foregoing is true and correct. I  
declare that I am employed in the office of a member of the bar of this court at  
whose direction the service was made.

Executed at Irvine, California, this 25 day of July, 2008.

Renee K. Aven  
(typed)

  
(signature)

739472



**CERTIFICATE OF SERVICE**

I declare that I am employed with the Legal Department of Federal Express Corporation, whose address is 2601 Main Street, Suite 340, Irvine, California 92614. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on July 25, 2008, I served a copy of:

**DEFENDANTS FEDERAL EXPRESS CORPORATION'S NOTICE OF REMOVAL**

☒ **BY U.S. MAIL [Fed. Rule Civ. Proc. rule 5(b)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Fed Ex, 2601 Main Street, suite 340, Irvine, California 92614 in accordance with Fed Ex's ordinary business practices.

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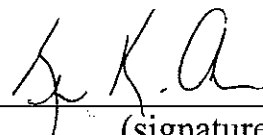
Enrique Martinez, Esq.  
Law Office of Enrique Martinez  
360 Grand Avenue, #141  
Oakland, CA 94610  
Telephone No.: (510) 287-4302 / Facsimile No.: (510) 835-1417

Attorneys for Plaintiff, Orlando Delgado

I declare under penalty of perjury that the foregoing is true and correct. I  
declare that I am employed in the office of a member of the bar of this court at  
whose direction the service was made.

Executed at Irvine, California, this 25<sup>th</sup> day of July, 2008.

Renee K. Aven  
(typed)

  
(signature)

739471